

NTSB Order No. EA-4920

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 15th day of October, 2001

Respondent .

Respondent, appearing pro se, has appealed from the oral initial decision of Administrative Law Judge William A. Pope, II, issued on November 22, 1999, following an evidentiary hearing.¹ The law judge affirmed, in part, an order of the Administrator, on finding that respondent had violated 14 C.F.R. §§ 91.155(c) and (d), and 91.13(a) in connection with an August 15, 1998

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takeoff from London, Kentucky.² The only issues raised at the hearing were the time of respondent's takeoff and the prevailing weather. The law judge found, as a matter of fact, that respondent departed the airport at approximately 7:50 A.M., when the weather reports at 7:30, and at 7:47 -- both of which were available by radio to pilots -- were visibility 2½ miles, ceiling 300 feet (that is, Instrument Flight Rules conditions). We deny the appeal.

Respondent raises three issues. First, he offers portions of the transcript, primarily his own testimony, to support his claim that, at the time the Administrator's witnesses said he was taking off, he was already airborne for some time, having departed when weather conditions were more favorable and still VFR. The main difficulty with this argument is that the law judge rejected his version of events, in favor of that of two percipient witnesses offered by the Administrator, and we have no basis to overturn that finding. Administrator v. Smith, 5 NTSB

² Section 91.155(c) prohibits operating an aircraft beneath the ceiling under visual flight rules (VFR) within the lateral boundaries of controlled airspace designated to the surface for an airport when the ceiling is less than 1,000 feet. Subsection (d) prohibits taking off in an aircraft under VFR within the lateral boundaries of the surface areas of Class E airspace designated for an airport when the reported ground visibility is less than 3 statute miles. Section 91.13(a), which prohibits operating an aircraft carelessly or recklessly so as to endanger the life or property of another, is a residual violation. Administrator v. Pritchett, NTSB Order No. EA-3271 (1991) at fn. 17, and cases cited there. The law judge dismissed the Administrator's additional claim that respondent had also violated section 91.103(a), and to effect that result, reduced the Administrator's proposed 90-day suspension to one of 60 days. The Administrator did not appeal.

1560, 1563 (1986).

Respondent next argues that another pilot report on the FAA tapes confirms his claim that the weather was clear when he took off. However, on his objection, those exact tapes, and transcripts, were not admitted. Thus, he may not rely on them for any purpose.³

Finally, respondent asks us to conclude that the weather was rapidly changing, and that it was changing for the better. He also argues that, in rapidly changing weather, the pilot's conclusions should prevail, citing Administrator v. Gaub, 5 NTSB 1653, 1656 (1986). Again, this would require us to ignore the law judge's findings of fact, which are supported by substantial evidence, and his credibility findings. Further, there is no basis in the record, other than respondent's self-serving testimony, to find that, after 8 A.M., the weather improved. To the contrary, the record suggests that it continued to decline for some time that morning before improving. Finally, in contrast to the discussion in Gaub, the FAA weather observer/recorder at London Airport was conscientiously making adjustments to the official weather reports to reflect the rapidly changing conditions.

³ The law judge had also noted that this evidence was unreliable for other reasons, not the least of which being the lack of proof regarding the exact time of that report and the location of the aircraft making it.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The 60-day suspension of respondent's airman certificate shall begin 30 days after the service date indicated on this opinion and order.⁴

CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order. BLAKEY, Chairman, did not participate.

⁴ For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).